

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

THOMAS D. ROSENBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 08 CV 3578
	)	
BOARD OF MANAGERS OF 391-401	)	Honorable Charles R. Norgle
PARK AVENUE CONDOMINIUM	)	Magistrate Judge Cox
ASSOCIATION and ROGER BISHOP,	)	
	)	
Defendants.	)	

**MOTION FOR WITHDRAWAL OF  
PETITION FOR REMOVAL**

Defendants, the Board of Managers of 391-401 Park Avenue Condominium Association and Roger Bishop (hereinafter "defendants"), by and through their counsel, Michael C. Kim & Associates, hereby present their motion for withdraw of petition for removal. In support thereof, defendants state as follows:

1. On June 23, 2008, the defendants filed a petition for removal of the above entitled action to the United States District Court for the Northern District of Illinois, Eastern Division.
2. The action was originally commenced against the defendants in the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois.
3. Count II of the original Complaint alleged discrimination by the defendants over which the United States District Court had original jurisdiction as it arose under the Fair Housing Act, 42 U.S.C. Section 3601, et seq.
4. On July 14, 2008, counsel for the defendants received an Amended Complaint by mail which was filed by the Plaintiff on July 11, 2008, a copy of which is attached hereto and incorporated by reference herein.
5. In the Amended Complaint, the Plaintiff has removed the original Count II and any reference to discrimination or the Fair Housing Act and replaced it with an entirely new Count II alleging breach of contract.
6. Because there is no longer a reference to the Fair Housing Act, the United States District Court no longer has original jurisdiction over this matter.

7. As a result of the foregoing, the defendants hereby withdraw their petition for removal and ask this Court to remand this matter to the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois for further proceedings.

WHEREFORE, the defendants pray that this Honorable Court grant their motion for withdrawal of their petition for removal to the United States District Court for the Northern District of Illinois, Eastern Division and enter an order remanding this cause to the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois for further proceedings.

Respectfully submitted:

By: /s/Eliot G. Schencker  
Attorney for Defendant

Eliot G. Schencker  
Michael C. Kim & Associates  
19 South LaSalle Street, Suite 303  
Chicago, IL 60603  
(312) 419-4000

FILED  
STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE 19<sup>TH</sup> JUDICIAL DISTRICT  
LAKE COUNTY  
JUL 17 2008

THOMAS D. ROSENBERG

*Shelly A. Coffelt*  
CIRCUIT CLERK

Plaintiff,

Case No. 08 AR 660

BOARD OF MANAGERS OF 391-401  
PARK AVENUE CONDOMINIUM and  
ROGER BISHOP

Defendants.

**AMENDED COMPLAINT**

NOW COMES Plaintiff, THOMAS D. ROSENBERG, by and through his attorneys,  
THOMAS D. ROSENBERG AND ASSOCIATES, and complains of the Defendants, BOARD  
OF MANAGERS OF 391-401 PARK AVENUE CONDOMINIUM and ROGER BISHOP and  
in support thereof states as follows:

**COUNT I**  
**BREACH OF FIDUCIARY DUTY**

1. Plaintiff, Thomas D. Rosenberg, is the lawful owner of the property commonly  
known as 401 Park Avenue East, Unit 104, Highland Park, Illinois 60035.
2. Defendant, Board of Managers of 391-401 Park Avenue Condominium Association,  
(hereinafter "the Board") owe a fiduciary duty to unit owners.
3. Defendant, Roger Bishop became a member of the Board on or about March 31, 2005

and is a current member of the board.

4. Between March 31, 2005 and the date of the filing, Plaintiff, Thomas D. Rosenberg, has notified and complained numerous times to Mr. Bishop in his capacity as Board member concerning water seeping into his unit causing extensive damage and mold, which may be the result of a structural defect with the building.

5. Mr. Bishop and the Board have also been notified numerous times by Plaintiff that the continuing water damage is causing health hazards in the Plaintiff's unit.

6. The Board and its members have first-hand knowledge of the water damage and hazardous condition of Plaintiff's unit through several personal visits in June of 2005 and the numerous oral and written notices and reports from Plaintiff.

7. Defendants Board and Roger Bishop have willfully disregarded Plaintiff Thomas Rosenberg's repeated requests, both oral and written, to remedy the problem of the water damage and hazardous conditions.

8. As a direct result of Defendants' willful and purposeful failure to take the appropriate measures to remedy the water problem, Plaintiff's newly installed oak wood floor and sub-floor have buckled causing dangerous conditions, the growth of mold and rotting materials, and the inability to use interior and exterior doors.

9. As a direct result of failing to take prudent actions to remedy a possible structural defect with the building, the Board and Roger Bishop have breached their fiduciary duties to the unit owner, Plaintiff Thomas D. Rosenberg, pursuant to Section 605/18.4(q) of the Illinois Condominium Act.

10. WHEREFORE, the Plaintiff, THOMAS D. ROSENBERG, respectfully requests this Honorable Court for the following:

- A. Cause the Defendants to take all appropriate action to remedy any and all structural defects complained of by Plaintiff;
- B. Award Plaintiff all costs associated with repairing the hard wood floor that will have to be replaced, which the Plaintiff estimates to be in the amount over \$25,000;
- C. Place the Plaintiff's condominium assessments into an escrow account to be used toward the costs associated with the structural defects complained of by Plaintiff;
- D. Order the replacement of current members of the Board in conformance with the by-laws of the condominium association;
- E. Award Plaintiff reasonable attorney's fees and costs incurred in this matter;
- and;
- F. Grant such other relief as this Honorable Court deems appropriate and equitable.

COUNT II  
BREACH OF CONTRACT (BY-LAWS)

1-7. The Plaintiff re-adopts and re-alleges paragraphs 1 through 7 of Count I as paragraphs 1 through 7 of Count II as if fully set forth herein.

8. The Plaintiff has been illegally fined for various unsubstantiated violations.

9. The Defendants Board and Mr. Bishops' fines against the Plaintiff violate the general powers of the Board pursuant to Article V(6) of the Declaration of Condominium Ownership and of Easements, Restrictions and Covenants (hereinafter "the by-laws").

10. The by-laws do not prescribe any authority to the Board to impose fines to condominium residents.

11. As a direct result of failing to take prudent actions to remedy a possible structural defect with the building, the Board and Roger Bishop have breached their contractual duties to the unit owner, Plaintiff Thomas Rosenberg, pursuant to Article V(6)(g) of the Declaration of Condominium Ownership and of Easements, Restrictions and Covenants (hereinafter "the by-laws").

12. As a direct and proximate result of the Defendants' actions, the Plaintiff has been damaged in the amount of \$200, the cost of the illegal fines.

13. WHEREFORE, the Plaintiff, THOMAS D. ROSENBERG, respectfully requests this Honorable Court for the following:

A. Cause the Defendants to take all appropriate action to remedy any and all structural defects complained of by Plaintiff;

B. Award Plaintiff all costs associated with repairing the hard wood floor that will have to be replaced, which the Plaintiff estimates to be in the amount over \$25,000;

C. Place the Plaintiff's condominium assessments into an escrow account to be used toward the costs associated with the structural defects complained of by Plaintiff;

D. Either reimburse the Plaintiff or eliminate the illegal fines of \$200;

E. Order the replacement of current members of the Board in conformance with the by-laws of the condominium association;


F. Order the draft of a new Declaration of Condominium Ownership and of Easements, Restrictions and Covenants (By-Laws).

G. Award Plaintiff reasonable attorney's fees and costs incurred in this matter; and;

H. Grant such other relief as this Honorable Court deems appropriate and equitable.

Respectfully submitted,

Thomas D. Rosenberg and Associates

By: 

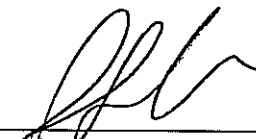
Steve H. Kim, One of its Attorneys

Steve H. Kim  
ARDC#: 6277787  
Thomas D. Rosenberg & Associates  
1051 W. Belmont  
Chicago, IL 60657  
312-593-1823

State of Illinois       )  
                                  )  
County of Lake       )       ss.

**VERIFICATION**

Under penalties provided by law, pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I, Steve Kim of Thomas D. Rosenberg & Associates, the undersigned counsel for Defendant, certify that the statements set forth in this instruments and attached documents hereto are true and correct, except as to matters stated to be on information and belief, as to these matters I certify that I believe those statements to be true.

  
\_\_\_\_\_  
Steve Kim

**THIS PLEADING PREPARED BY THE UNDERSIGNED AND EXECUTED IN  
ACCORDANCE WITH SUPREME COURT RULE 137.**

  
\_\_\_\_\_  
Attorney at Law

Steve H. Kim  
ARDC#: 6277787  
Thomas D. Rosenberg & Associates  
1051 W. Belmont  
Chicago, IL 60657  
312-593-1823



STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE 19<sup>TH</sup> JUDICIAL DISTRICT  
LAKE COUNTY

THOMAS D. ROSENBERG

Plaintiff,

Case No. 08 AR 660

BOARD OF MANAGERS OF 391-401  
PARK AVENUE CONDOMINIUM and  
ROGER BISHOP

Defendants.

**NOTICE OF FILING**

To: Eliot G. Schencker  
Michael C. Kim & Associates  
19 S. LaSalle Street, Suite 303  
Chicago, Illinois 60603

Please take **NOTICE** that on **July 11, 2008, Thomas Rosenberg** , through his counsel, Steve Kim filed with the Clerk of the 19<sup>th</sup> Judicial District, Lake County, Illinois the **Attached Amended Complaint**, a copy of which is hereby served upon you.



Steve Kim

CERTIFICATE OF SERVICE

I, Steve H. Kim, an attorney, certify that I served this Notice by mailing a copy to Michael Kim & Associates at 19 S. LaSalle Street, Suite 303 Chicago, Illinois 60603 to the attention of Eliot Schencker at the U.S. Post Office 11013 N. Woodstock St. Huntley, Illinois 60142 on July 11, 2008 by 4:30 pm with postage prepaid.

A handwritten signature in black ink, appearing to be 'SK', is written above a horizontal line.

Steve H. Kim  
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